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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,729	08/25/2003	William T. Dalebout	13914.880	8150

7590 04/17/2007  
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EXAMINER
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MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/647,729

Applicant(s)

DALEBOUT ET AL.

Examiner

Fenn C. Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32, 35-38 and 40-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32 and 35-37 is/are allowed.
- 6) ☒ Claim(s) 1-4, 11-17, 20-31, 38, 44-48 and 54-62 is/are rejected.
- 7) ☒ Claim(s) 5-10, 18, 19, 40-43 and 49-53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 49-53 are objected to because of the following informalities: The claims are dependant on themselves. Examiner is precluded from examining claims, because it is unclear whether the claims should depend from claim 45 or claim 448. Appropriate correction is required.
2. Claims 40-41 are objected to because of the following informalities: The claims are dependant on rejected claim 39. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-4, are rejected under 35 U.S.C. 102(b) as being anticipated by Fontenot (U.S. 6,113,522). Fontenot discloses a support frame having a support base configured to provide stability to the exercise machine, a single resilient rod linked to the support frame, the rod configured to provide resistance during exercise, and a variable resistance system (69) that can be utilized with the resilient rod to provide varying amounts of resistance for a user during exercise (col. 6, lines 58-67 and col. 7, lines 21-25) (limitations remain broad, and thus a seated user will have varied mechanical advantage to flex the resilient member). Referring to claim 2, Fontenot discloses an upright support member. Referring to claim 3, Fontenot discloses the resilient rod

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coupled to the upright support member. Referring to claim 4, Fontenot discloses the first end, second end, and center portion moving during exercise (relative to the seat).

5. Claims 11-17, 38, 42, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens (U.S. 5,022,377). Referring to claim 11, Stevens, as broadly construed discloses a support frame (16, 22), at least one resilient elongate member (60) having a first end, a second end, and an intermediate portion, wherein the intermediate portion is linked to the support frame, and a cable and pulley system coupled to the support frame (indirectly via the resilient rod) and the resilient member, the cable and pulley system (68, 74) having at least one cable adapted to be moved by a user, wherein movement of the cable causes movement of the first end, the second end, the intermediate portion of the resilient elongate member. Referring to claim 12, Stevens discloses a pair of pulleys. Referring to claim 13, Stevens discloses the single cable routed through a plurality of pulleys, and as broadly claimed, they are configured such that the first end of the cable can be displaced. Referring to claim 14-15, as broadly claimed, one end of the cable can be pulled forward further than the opposing end. Referring to claim 16-17, absent further limitation, Stevens defines a resistance assembly. Referring to claims 38

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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7. Claims 20-31, 45-47, 54-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fontenot in view of Brown (U.S. 5,254,066). Fontenot teaches that the resistive cylinder may be adjusted to control or select the amount of resistance desired by the user and further teaches that the cylinder is used in combination with the resilient rod via the vertical post. Therefore, any changes or adjustments made to the resistance provided by the cylinder also changes the amount of resistance provided by the resilient rod. Fontenot fails to teach a weight selector controller. However, the use of various controllers to change or adjust the amount of resistance that is imparted by a resistive cylinder is old and well known, as evidenced by Brown. Brown teaches the use of a computer controlled movement of the piston rod (28) that is inserted into a hydraulic cylinder (30). The control valve, absent further limitation and as broadly claimed, comprehends the weight selector controller as the valve controls the movement and therefore the resistance of the cylinder based on programmed input. Note that Brown teaches numerous programming features. It would have been obvious to one of ordinary skill in the art at the time of invention was made to have utilized a control valve or weight selector controller as taught by Brown in the Fontenot device in order to readily change or adjust the amount of resistance provided during exercise. Limitation drawn to specific parameters and programming features are considered matters of obvious design choice well within the knowledge of the skilled artisan.

***Allowable Subject Matter***

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8. The indicated allowability of claims 40-43 and 45-62 is withdrawn in view of the newly discovered reference(s) to Brown and Stevens. Rejections based on the newly cited reference(s) are noted above.
9. Claims 5-10, 18-19, and 42-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. Claims 32 and 35-37 are allowed.

### ***Response to Arguments***

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Examiner has withdrawn the double patenting rejection. Examiner acknowledges the novelty of Applicant's device as a whole, however, the claims remain extremely broad, and therefore warrant a broad reading of the cited prior art. Although clearly for a different purpose, the cited prior art meets the broad claimed limitations. Furthermore, Applicant is reminded that limitations of the specification are not read into the claims themselves.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



F.C. Mathew  
April 15, 2007